

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 10 - 27

BILL 40 (2010)

A BILL FOR AN ORDINANCE

TO REZONE LAND SITUATED AT EWA, OAHU, HAWAII

BE IT ORDAINED by the People of the City and County of Honolulu.

SECTION 1. Zoning Map No. 12, Ordinance 86-114, is hereby amended as follows: Land situated Ewa, Oahu, Hawaii hereinafter described, is hereby rezoned from AG-1 Restricted Agricultural District to A-2 Medium Density Apartment District with a 60-foot height limit. The boundaries of said District shall be described as shown on the map attached hereto, marked "Exhibit A" and made a part hereof, and further identified as Tax Map Key 9-1-017:107.

SECTION 2. A Unilateral Agreement marked "Exhibit B" is by reference incorporated herein and made a part hereof.

DPP09Z-5.B10



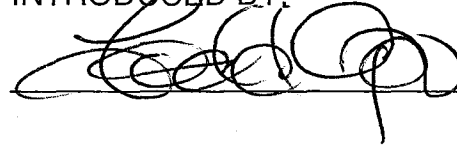
CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 10 - 27
BILL 40 (2010)

A BILL FOR AN ORDINANCE

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:



(br)

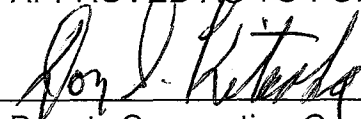
DATE OF INTRODUCTION:

JUL 26 2010

Honolulu, Hawaii

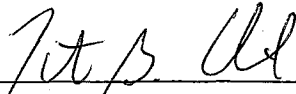
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

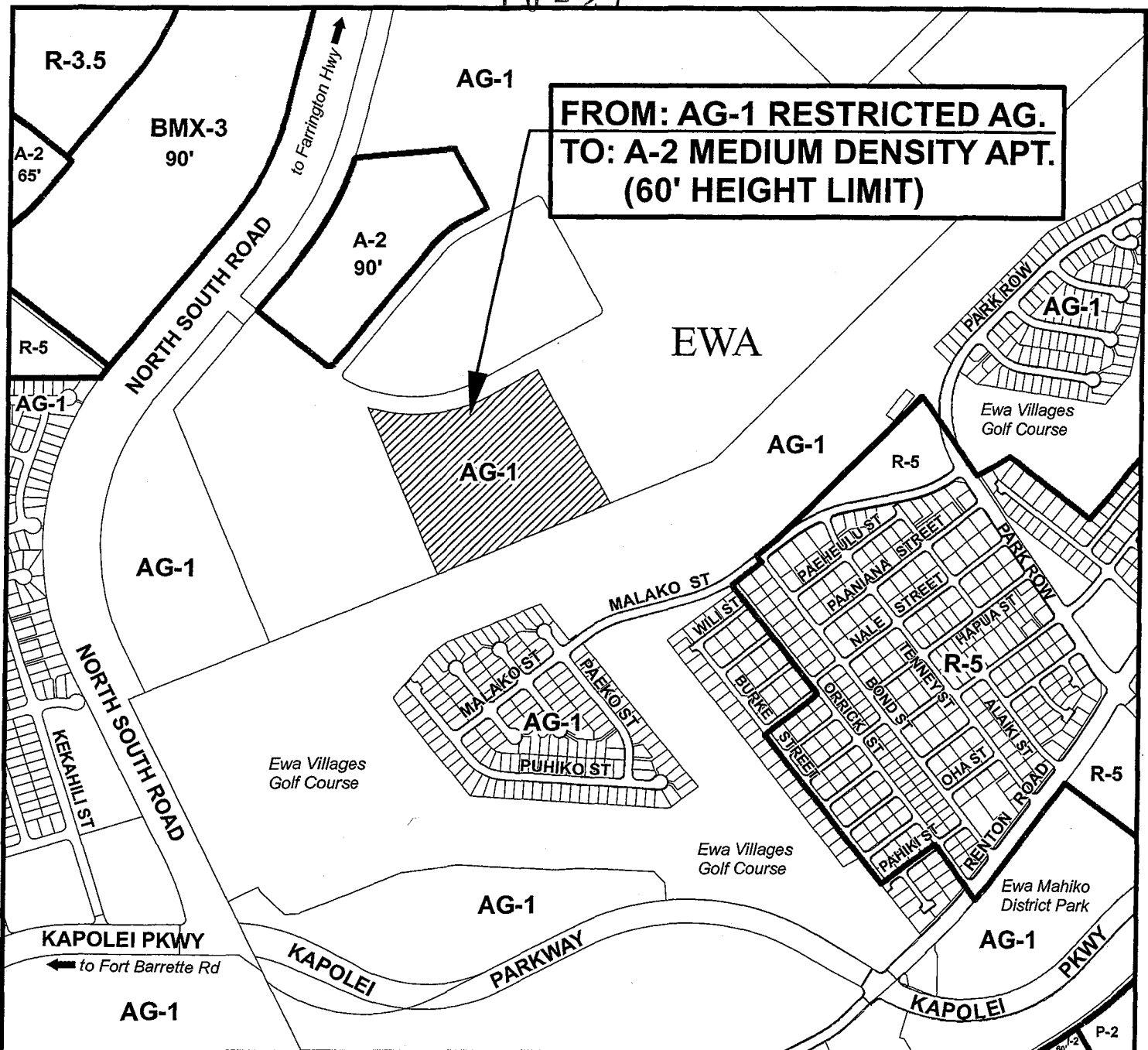


Deputy Corporation Counsel

APPROVED this 27th day of October, 20 10.



~~MUHAMMAD MANN~~ PETER B. CARLISLE, Mayor
City and County of Honolulu



0 400 800
1 IN. = 800 FT.

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PORTION OF
ZONING MAP NO. 12
(EWA BEACH - IROQUOIS POINT)

APPLICANT: THE MUTUAL HOUSING ASSOCIATION OF HAWAII

TAX MAP KEY(S): 9-1-017: 107

FOLDER NO: 2009/Z-5

LAND AREA: 17.783 ACRES

PREPARED BY: DEPARTMENT OF PLANNING & PERMITTING
CITY AND COUNTY OF HONOLULU

PUBLIC HEARING: PLANNING COMMISSION

CITY COUNCIL

ORD. NO. 10-27

APR 14 2010

2009/Z-5

EFF. DATE: OCT 27 2010

EXHIBIT A

BILL 40 (2010)

OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
(Bureau of Conveyances)

The original of this document was
recorded as follows:

Doc 4005633
CTN 969,129
OCT 05, 2010 03:00 PM

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL () PICKUP () TO:

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for
Conditional Zoning

PARTIES TO DOCUMENT:

Lessee and Declarant: The Mutual Housing Association of
Hawai'i, Inc.

Fee Owner: Hawaii Housing Finance and Development
Corporation

TAX MAP KEY NO. (1) 9-1-017: 107

UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this 5th day of October, 2010, by THE MUTUAL HOUSING ASSOCIATION OF HAWAI'I, INC., a Hawaii nonprofit corporation, whose address is 900 Fort Street Mall, Suite 1690, Honolulu, Hawaii (hereinafter referred to as

EXHIBIT B

the "Declarant") and HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body corporate and politic of the State of Hawaii, whose address is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813 (hereinafter referred to as the "Fee Owner"),

WITNESSETH:

WHEREAS, the Fee Owner is the owner in fee simple of that certain parcel of land situated in Honouliuli, Ewa, Oahu, Hawai'i, consisting of approximately 17.783 acres, described as Tax Map Key No. (1) 9-1-017: 107, and more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Land"); the Declarant is the ground lessee of the Land under that certain Ground Lease dated January 27, 2010, recorded as Document No. 3943967 in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i and noted on Transfer Certificate of Title No. 969,129; and the Fee Owner and the Declarant desire to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarant plans to develop an affordable rental housing project on the Land (the "Project"); and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from AG-1 Restricted Agricultural District to A-2 Medium Density Apartment District with a 60-foot height limit (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 40 (2010), was held by the Council on September 22, 2010; and

WHEREAS, the Council recommended by its Zoning Committee Report No. CR204 that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant and the Fee Owner hereby covenant and declare as follows:

1. Affordable Housing. Prior to residential building permit approval, the Declarant shall execute a binding agreement to participate in an affordable housing plan acceptable to the Department of Planning and Permitting ("DPP") in accordance with adopted rules and Resolution 09-241, CD1. No less than 30 percent of the total number of dwelling units in the Project shall be affordable to households with incomes not exceeding 140 percent of the median income for Honolulu, with no less than 20 percent of the total number of dwelling units being affordable to households with incomes not exceeding 120 percent of the median income, and with no less than 10 percent of the total number of dwelling units being affordable to households with incomes not exceeding 80 percent of the median income.
2. Transportation. The Declarant shall carry out the following requirements related to traffic and transportation improvements for the Project:
 - a. The Declarant shall prepare and receive approval for an updated Traffic Analysis Report (TAR) for the Project. The updated TAR shall be submitted one year after the certificate of occupancy has been issued for the housing project to validate the projected traffic volumes contained in the November 2007 TAR. The updated TAR shall include but not be limited to turning movement counts at the driveways to the Project and the possible need to extend the left turning pockets from the "East-West Road" if traffic is queuing beyond the designed left turn pockets and impeding the through traffic. Needed extensions of the turning pockets will be the responsibility of the Declarant. The Declarant shall consult with the Department of Planning and Permitting ("DPP"), the Department of Transportation Services ("DTS"), and the State Department of Transportation ("SDOT") prior to submitting the updated TAR to the DPP for review and approval.
 - b. The Declarant shall prepare a Traffic and Pedestrian Management Plan for the Project to minimize vehicular trips by encouraging ride sharing and transit use to promote safe pedestrian activity, particularly for school children attending the proposed elementary and middle schools in East Kapolei. The plan shall be prepared and approved by the DPP prior to issuance of the certificate of occupancy of the Project and updated periodically as needed to meet the needs of the housing development.
 - c. The Declarant shall provide access from the Project to East-West Road via a network of ADA-compliant

pedestrian pathways to ensure that residents of the Project are able to use the bus transit system and eventually the Honolulu High Capacity Transit Corridor Project. The Declarant shall consult with the DTS prior to submitting plans to the DPP for review and approval.

3. Wastewater. Prior to building permit approval, the Declarant shall submit a revised East Kapolei II Wastewater Management Plan to the DPP for review and approval. The revised East Kapolei II Wastewater Management Plan shall include but not be limited to an analysis of the 308 unit project instead of the 150 unit development that was approved in 2009.
4. Solid Waste. Prior to building permit approval, the Declarant shall ensure that all solid waste collection areas have roofs over them to ensure that rainwater will not enter any of the solid waste containers.
5. Urban Design Plan. Prior to subdivision or building permit approval, whichever comes first, the Declarant shall submit an urban design plan to the DPP for review and approval. The urban design plan shall include a conceptual landscape plan showing treatment of the Project's entries on East-West Road and common areas. To the extent possible, this urban design plan shall incorporate the proposed theme and architectural character for the East Kapolei II subdivision under the jurisdiction of the Department of Hawaiian Home Lands. The urban design plan shall be limited to the Declarant's project site identified by Tax Map Key: 9-1-017:107.
6. Disclosures. The Declarant shall inform all prospective purchasers, renters or lessees of residential units or properties in the Project of the potential noise impacts of civilian and military aircraft flying overhead that utilize Kalaeloa Airport during the day and night. Language of the disclosure document shall be reviewed and approved by the SDOT prior to execution of sales or lease documents.
7. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction and/or describing its progress toward complying with each condition of approval for this zone change. This status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied. Failure to do so may result in delays in processing of further permits.
8. Noncompliance or Failure to Fulfill Any Conditions. In the

event of noncompliance or failure to fulfill any of the conditions set forth herein, the Director of the DPP shall inform the Council and may institute action to terminate or stop the Project until applicable conditions are met. Noncompliance also may be grounds for revocation of the permits issued under this zone change. Noncompliance also may be grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

9. The Declarant acknowledges that approval of the zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.

NOW, THEREFORE, the Declarant and the Fee Owner hereby make the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the DPP may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors,

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant and/or the Fee Owner or their successors and assigns may file a petition with the DPP for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

AND the Fee Owner hereby consents to and joins in this Declaration and agrees that the Land shall hereafter be subject to the covenants and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

THE MUTUAL HOUSING ASSOCIATION OF
HAWAI'I, INC.

By

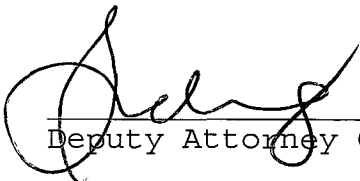


David M. Nakamura
Its Executive Director

"Declarant"

APPROVED AS TO FORM:

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION



Deputy Attorney General

By



Janice Takahashi
Chief Planner

"Fee Owner"

STATE OF HAWAII)
) SS.
 CITY AND COUNTY OF HONOLULU)

On this 29th day of September, 2010, before me appeared David M. Nakamura, to me personally known, who, being by me duly sworn, did say that he is the Executive Director of The Mutual Housing Association of Hawai'i, Inc., a Hawaii non-profit corporation; that the corporation has no seal; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that said David M. Nakamura acknowledged that said instrument to be the free act and deed of said corporation.



[Signature]

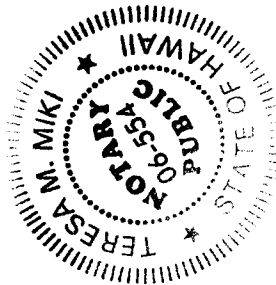
TERESA M. MIKI

Notary Public, State of Hawaii

My Commission Expires: 9/10/2014

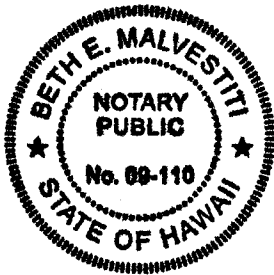
Doc. Date: 10/5/10 # Pages: 9
 Notary Name: Teresa M. Miki First Circuit
 Doc. Description: Unilateral Agreement
and Declaration for Conditional Zoning
[Signature] 9/29/10
 Notary Signature Date

NOTARY CERTIFICATION



STATE OF HAWAII)
) SS.
 CITY AND COUNTY OF HONOLULU)

On this 30 day of September, 2010, before me appeared JANICE TAKAHASHI, to me personally known, who, being by me duly sworn, did say that she is the CHIEF PLANNER of the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii; that the seal affixed to the foregoing instrument is the corporate seal of said HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION; that said instrument was signed and sealed in behalf of said HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION by authority of its Board of Directors, and said JANICE TAKAHASHI acknowledged said instrument to be the free act and deed of said HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION.



Beth E. Malvestiti

Name: Beth E. Malvestiti
 Notary Public, State of Hawaii
1st Circuit Court
 My Commission Expires: APR 5 2013

Doc. Date: 10/5/10
 # of Pages: 9
 Doc. Description: Unilateral
Agreement and
Declaration for
Conditional Zoning

Exhibit "A"

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 18063, area 17.783 acres, more or less, as shown on Map 1410, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased;

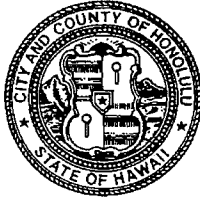
Together with access over Easement 9669 to Lot 17853, as shown on Map 1375 Land Court Application No. 1069, and then over Easement 4770, as shown on Map 712 Land Court Application No. 1069, affecting Lot 10067-B, as shown on Map 876 Land Court Application No. 1069, affecting Lot 10067-B, as shown on Map 876 Land Court Application No. 1069, to Farrington Highway, a public road, as set forth by Land Court Order No. 176857, filed November 10, 2008;

Being the land(s) described in Transfer Certificate of Title No. 969,129 issued to HAWAII HOUSING FINANCING AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic, as Fee Owner.

END OF Exhibit "A"

10-27
DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
PHONE: (808) 768-5193 * FAX: (808) 768-5105 * INTERNET: www.honolulu.gov



KIRK W. CALDWELL
ACTING MAYOR

CARRIE K.S. OKINAGA
CORPORATION COUNSEL

KATHLEEN A. KELLY
FIRST DEPUTY CORPORATION COUNSEL

October 7, 2010

The Honorable Todd K. Apo, Chair
and Members of the City Council
City and County of Honolulu
Honolulu, Hawaii 96813

Dear Council Chair Apo and Councilmembers:

Re: Bill No. 40 (2010) – Unilateral Agreement and Declaration for Conditional
Zoning for Zone Change in Ewa, Hawaii (2009/Z-5)

This letter is to advise you that the above-referenced Unilateral Agreement and Declaration for Conditional Zoning (hereinafter called the "Unilateral Agreement," a copy of which is attached) has been recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 4005633.

The recordation is required by Section 21-2.80, Revised Ordinances of Honolulu 1990, as amended. We have reviewed the property description and data attached to the Unilateral Agreement and conclude that the Unilateral Agreement has been recorded in the appropriate recording system (Land Court), that the property description is complete, and that the document has been signed by the proper parties.

In view of the above, we conclude that the Unilateral Agreement has been appropriately recorded as required by Section 21-2.80, Revised Ordinances of Honolulu 1990, as amended, and the Council may consider further action on Bill 40 (2010), as it deems appropriate.

Very truly yours,

A handwritten signature in black ink, appearing to read "Don S. Kitaoka".

DON S. KITAOKA
Deputy Corporation Counsel

APPROVED:

A handwritten signature in black ink, appearing to read "Carrie K.S. Okinaga".
CARRIE K.S. OKINAGA
Corporation Counsel

DSK:ml
Attach.

DEPT. COM. 769

10-27

RECEIVED
OCT 7 11 03 AM '10
CITY CLERK
HONOLULU, HAWAII

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE 10 - 27

BILL 40 (2010)

Introduced: 07/26/10 By: TODD APO (BR)

Committee: ZONING

Title: A BILL FOR AN ORDINANCE TO REZONE LAND SITUATED AT EWA, OAHU, HAWAII.

Links: [BILL 40 \(2010\)](#)
[CR-268](#)
[CR-304](#)

COUNCIL	08/18/10	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING.				
	ANDERSON Y	APO Y	CACHOLA Y	DELA CRUZ Y	DONOHUE Y	
	GARCIA Y	KOBAYASHI Y	OKINO Y	TAM Y		
ZONING	08/31/10	CR-268 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING. CURRENT DEADLINE: 10/13/10.				
PUBLISH	09/11/10	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.				
COUNCIL	09/22/10	CR-268 ADOPTED. BILL PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON ZONING.				
	ANDERSON Y	APO Y	CACHOLA Y	DELA CRUZ Y	DONOHUE Y	
	GARCIA Y	KOBAYASHI Y	OKINO Y	TAM Y		
PUBLISH	09/30/10	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.				
ZONING	10/05/10	CR-304 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING. (GRANTED A 90-DAY EXTENSION OF TIME (NEW DEADLINE: JANUARY 11, 2011))				
COUNCIL	10/13/10	CR-304 ADOPTED AND BILL 40 (2010) PASSED THIRD READING.				
	ANDERSON Y	APO Y	CACHOLA Y	DELA CRUZ Y	DONOHUE Y	
	GARCIA Y	KOBAYASHI Y	OKINO Y	TAM Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


BERNICE K. N. MAU, CITY CLERK


TODD K. APO, CHAIR AND PRESIDING OFFICER